



# California Fair Political Practices Commission

September 14, 1989

Marian E. Moe  
Balfrey & Abbott

Michael Dean  
Roseville City Attorney

Balfrey & Abbott  
1801 I Street, Suite 200  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-89-454

Dear Ms. Moe and Mr. Dean:

You have requested advice concerning application of the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> This advice is based upon the facts provided in your letter and in our telephone conversations.

## QUESTIONS

Placer County and the cities of Roseville and Rocklin are considering establishing a joint powers authority for construction of four freeway interchanges. The law firm of Balfrey & Abbott is being considered as the contract legal advisor of the authority. Marian E. Moe and William W. Abbott would perform the legal work. You have asked the following questions:

1. Would Ms. Moe or Mr. Abbott be considered "consultants" under the Act?

2. Would any effect upon R.C. Collet, a client of Balfrey & Abbott, be distinguishable from the effect on the public generally?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

3. As an employee of Balfrey & Abbott, will Ms. Moe have to disqualify herself from participating in any decisions of the authority?

4. If Ms. Moe later becomes a partner in Balfrey & Abbott, with less than a 10-percent share, what disqualification issues would apply if she continued to act as legal advisor to the authority?

5. If the contract with Balfrey & Abbott is limited in such a way that Balfrey & Abbott does not participate in recommendations on the timing, sequence or location of construction of the four interchanges, does not make recommendations on whether one allocation method for spreading the cost is preferable to another, and does not negotiate any reimbursement agreement with R.C. Collet, will that "insulate" Ms. Moe or Mr. Abbott from any potential disqualification issue if she or he acts as legal advisor to the authority?

6. Would Ms. Moe or Mr. Abbott's actions as legal advisor be affected if a change in land use occurs--a matter not within the jurisdiction of the authority?

#### CONCLUSIONS

1. According to the facts presented, Ms. Moe and Mr. Abbott would be considered "consultants" under the Act in their position as contract attorneys to the authority.

2. While the jurisdiction of the authority is limited to the areas of benefit for the interchanges, there are only 13 owners with holdings as large or larger than R.C. Collet. This is not a sufficient segment of the public to constitute the public generally.

3. As an employee of the firm, Ms. Moe would not be disqualified from participating in decisions unless they would have a material financial effect on the firm.

4. If Ms. Moe later becomes a partner in the firm, clients of the firm will not be sources of income to her unless her ownership interest is 10 percent or greater.

5. Limitation of the contract in the manner suggested would undoubtedly remove many potential conflicts, but would not "insulate" Mr. Abbott. As an owner of more than 10 percent of the firm, Mr. Abbott must disqualify himself from participating in any decisions which would have a foreseeable material effect on R. C. Collet, because R. C. Collet is a source of income to

Mr. Abbott. Under the facts presented, Ms. Moe does not have a foreseeable conflict of interest.

6. The conflict-of-interest provisions of the Act apply only to decisions in which the public official participates. However, decisions made by other jurisdictions could change the effect of decisions to be made by Ms. Moe or Mr. Abbott. Also, the Act prohibits Ms. Moe and Mr. Abbott from using their official position as legal advisors to the authority to influence the decisions of the other jurisdictions with respect to decisions having a material effect upon their economic interests.

#### FACTS

According to the facts that you have provided, the Cities of Roseville and Rocklin and the County of Placer plan to enter into a joint powers agreement for the purpose of creating a joint powers authority ("authority") to implement plans for, finance and construct four freeway interchanges on Highway 65. The authority is considering contracting with the law firm of Balfrey and Abbott ("Balfrey") to act as legal advisor to the authority. It is contemplated that the actual work of legal advisor will be performed by firm members Marian E. Moe, William W. Abbott or both Ms. Moe and Mr. Abbott.

One of Balfrey's clients, R.C. Collet ("Collet"), owns three parcels in Placer County within the area benefited by the freeway interchanges. Balfrey represents Collet for the purpose of obtaining discretionary land use entitlements and reviewing associated environmental documents relating to a pending application for a use permit from the Placer County for operation of a rock quarry. Balfrey receives more than \$1,000 a year of its income from Collet.

The authority will have jurisdiction over the final detailed planning, financing and construction of the freeway interchanges. The decision to build the four interchanges and the determination of their locations and design have already been made by the three jurisdictions. The specific properties that are expected to be within the area of benefit have been included in a detailed study of the financing plan. The study includes an estimate of the total costs and a method for allocating the costs among properties in the area of benefit. You do not anticipate that Balfrey will be asked to participate in any decision affecting the basic parameters of the project.

The interchanges will be financed by a combination of bonds and development fees. The authority will, among other things:

- 1) form a special assessment district and/or special tax district;
- 2) levy fees and taxes; 3) enter into lease-purchase agreements;

4) issue bonds and incur other forms of indebtedness; and  
5) negotiate and enter into reimbursement agreements for repayment if a developer constructs one or more interchanges. The plan may include a mechanism for borrowing funds collected from one interchange to fund another.

The anticipated costs to each property will be calculated using a variety of factors including land use category, vehicle trip generation, distance from the interchanges and alternative routes available to the property in question. The broad classification for different properties include such categories as urban reserve, single family residential and multi-family residential. Collet's property has been classified as urban reserve in the financing study.

It is not anticipated that Balfrey will be asked to provide advice regarding the total cost of the freeway interchanges or the methodology for determining a fair allocation among property owners. Although it is foreseeable that Collet's property may increase in value more than \$10,000 as a result of the construction of the interchanges, it is not anticipated that Balfrey will be asked to participate in decisions affecting the questions of whether the freeway interchanges will be built or the timing of when they will be built.

The authority does not control changes in land use entitlements or other matters on which Balfrey represents Collet. The land use entitlements sought by Collet are not dependent upon the timing, detailed planning, financing or construction of the interchanges. The volume of business Balfrey receives from Collet will not be affected by the decisions of the authority, because the major decisions regarding construction and location of the interchanges have already been made.

#### ANALYSIS

The conflict-of-interest provisions of the Act prohibit a public official from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the public official knows or has reason to know he or she has a financial interest. (Section 87100.)

#### Public Official

The first question presented is whether the proposed contractual relationship between Balfrey and the authority will result in members of Balfrey being considered public officials under the Act. A public official is defined, in part, as "every natural person who is a member, officer, employee or consultant of

a state or local government agency." (Regulation 18700, copy enclosed.)

Balfrey itself cannot be a consultant, because a consultant must be a natural person. (Russell Advice Letter, No. A-88-484, copy enclosed.) However, Ms. Moe, Mr. Abbott or any other member of Balfrey who would be performing duties under the proposed contract, will be considered a consultant under the Act if he or she provides information, advice, recommendation or counsel to the authority, unless such person: (1) is independent of control and direction of authority, other than normal contract monitoring; and (2) possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel. (Regulation 18700(a) (2); Hayden Advice Letter, No. A-84-319, copy enclosed.)

You have indicated that the services to be provided to the authority would include giving legal advice to the authority in matters involving the financing and detailed design of the interchanges, establishing the assessment districts, levying taxes and fees, and making and monitoring construction contracts. Ms. Moe or Mr. Abbott would be interacting directly with decision-makers on an on-going basis. They would essentially be functioning as general counsel to the authority. (Workman Advice Letter, No. I-87-078; Kaplan Advice Letter, No. A-82-108, copies enclosed.)

We have previously advised that a contract attorney providing advice and counsel to a government agency on an on-going basis is participating in governmental decisions within the meaning of Section 87100. This is true even if the attorney's advice is limited to a specific area of law. (Gifford Advice Letter, No. A-85-201, copy enclosed.) Based upon the foregoing, we believe that Ms. Moe and Mr. Abbott would qualify as consultants under the Act and are precluded from participating in decisions which would have a material effect on their financial interests.

#### Financial Interest

A public official may not participate in a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.) Whether the official has a financial interest in the decision is governed by Section 87103, which provides in part:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable

from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

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(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management....

Section 87103.

Ms. Moe is an employee of Balfrey and presumably Balfrey has been in the last 12 months, and will continue to be, a source of income to Ms. Moe of \$250 or more. Mr. Abbott is a partner in Balfrey and has a 10-percent or greater ownership interest which is presumably in excess of \$1,000. Therefore, Ms. Moe and Mr. Abbott would be disqualified from participating in any decisions that would have a material financial effect upon Balfrey.

If Ms. Moe becomes a partner in Balfrey, she will have an investment interest in Balfrey. However, unless her ownership interest is 10 percent or greater, sources of income to the firm will not be considered sources of income to her. (Section 82030.)

In Mr. Abbott's case, because he is a partner owning 10 percent or more of Balfrey, it is also necessary to examine the financial effect of any decisions on Collet. Income of an individual includes a pro-rata share of any income of any business entity in which the individual owns a 10-percent interest or greater. (Section 82030.) You have indicated that Mr. Abbott's pro-rata share of the firm's income from Collet has been in excess of \$250 within the last 12 months and that this will continue to be the case for the foreseeable future. Since Collet is a source of income of \$250 or more to Abbott, Abbott must disqualify himself from participating in any decisions that would have a

foreseeable material financial effect on Collet, different from the effect on the public generally.

Foreseeability

The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will occur. However, there must be something more than a mere possibility that the effect will occur. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Based upon the information provided in your letter and in telephone conversations, it is not anticipated that any decisions to be made by Ms. Moe or Mr. Abbott in their capacity as counsel to the authority would have any financial effect upon Balfrey or upon the general partners of the firm. Nor is it foreseeable that the volume of business Balfrey conducts on behalf of Collet will be affected by any decisions of the authority. Therefore, in the absence of any such effect, Ms. Moe and Mr. Abbott should not be disqualified from participating in decisions as counsel to the authority solely because of their economic interests in Balfrey. Ms. Moe would similarly not be disqualified if she becomes a partner with less than a 10 percent interest.

Whether decisions to be made by Ms. Moe or Mr. Abbott would have any effect upon Collet is less clear. You have not presented specific decisions for consideration, since the particular decisions in which Balfrey may participate are not yet known. Therefore, we can only give general guidance in this regard in the nature of informal assistance rather than specific advice.<sup>2</sup> Since the project as a whole does affect Collet significantly, it is foreseeable that some decisions in which Balfrey participates would also be considered to have an effect.

Two of the proposed interchanges do not include Collet in the area of benefit. Most decisions relating only to these interchanges should not impact upon Collet. However, you have suggested that the financing plan may include a mechanism for borrowing funds collected from one interchange to fund another. If the funding of an interchange benefiting Collet becomes dependent upon the financing of another interchange, decisions relating to the latter interchange could have an effect on Collet. Therefore, you must keep any such interrelationship in mind when assessing the impact on Collet of any decision in which Balfrey will participate. (Miller Advice Letter, No. A-82-119, copy enclosed.)

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<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

You have indicated that during the life of the authority, actions may be taken by the local governments individually which could affect the use of Collet's land. This, in turn, could affect the share of costs to Collet's land. However, the conflict-of-interest prohibitions only relate to the decisions in which Ms. Moe and Mr. Abbott participate.<sup>3</sup>

### Materiality

Even if a decision will have an effect on a financial interest of a public official, the public official is not disqualified from participating in the decision unless the effect is material. Whether the effect is material in any given case depends upon whether the effect is direct or indirect, and, if indirect, the magnitude of the effect. As indicated previously, it is not currently foreseeable that the decisions to be made by the authority will have any financial effect on Balfrey. Therefore, the following discussion is limited to the effects upon Collet.

If Collet is directly involved in any decision, that decision will materially affect Collet, unless the decision will have no financial effect on Collet. (Regulation 18702.1.) Direct involvement is determined according to the following criteria:

(b) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or

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<sup>3</sup> To the extent that their financial interest would be affected by the decision of the other jurisdiction, they must also avoid using their official position with the authority to influence the other agency's decision. (Regulation 18700.1, copy enclosed.)



revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Regulation 18702.1(b) (1), (2) and (3).

If Collet is only indirectly involved in a decision, the determination of materiality is measured differently. First of all, based upon information provided, the actual owner of the properties affected by the authority is RCC Partnership of which Collet is a partner. RCC Partnership and Collet are considered related business entities, because the same person is a controlling owner of both entities. (Regulation 18236(b)(3), copy enclosed.) A material, financial effect on a business entity that is related to a business entity in which the official has a financial interest is an effect on the official's financial interest. (Regulation 18706, copy enclosed.) Therefore, if the effect of any decision is material as to RCC Partnership, it will be material as to Collet.

Regulation 18702.2 (copy enclosed) sets forth the criteria for determining whether a financial effect on a business entity is material. Materiality is related to the size of the business entity. According to information provided by you, RCC Partnership has net tangible assets of at least \$4,000,000, and had a pre-tax income for the last fiscal year of at least \$750,000, with a net income from that period of at least \$400,000. The test of whether the decision will materially affect the partnership in this circumstance is as follows:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$30,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$7,500 or more; or

(3) The decision will result in an increase or decrease in the value of assets or liabilities of \$30,000 or more.

Regulation 18702.2(c).

As counsel for the authority, you will be involved in a variety of decision-making. You have requested some general guidelines with respect to how to determine whether any decisions

which may arise will materially affect Collet or RCC Partnership. The following discussion will focus upon Collet, since that is the only economic interest that is foreseeably affected. As previously stated, Collet is only a source of income to Mr. Abbott and not to Ms. Moe.

You have stated that you do not foresee that Balfrey will be asked to participate in decisions affecting whether the freeway interchanges will be built or the timing of when they will be built. Balfrey will not be asked to provide advice regarding total cost of the interchanges or the methodology for allocating costs among property owners. The determination to include Collet in the area of benefit has already been made. You anticipate that Balfrey will be involved in such matters as drafting construction contracts, answering questions posed by the three underlying jurisdictions relating to relative liability, establishing a time sequence for setting up assessment districts and collection prior to development, and other procedural matters. It is possible that some of these decisions will have a financial effect on Collet.

If the decision is one which is critical to the project and could result in its termination or significant modification, Mr. Abbott must refrain from participating in it to the extent that the total effect of the project will materially affect Collet according to the test set forth above. If the decision is one which implements a decision previously made, the effect of the decision could be measured by assessing the difference between various implementation alternatives presented. (Vickers Advice Letter, No. A-84-302; Mang Advice Letter, No. A-85-082, copies enclosed.)

Applying the foregoing factors to some areas of anticipated decision, we make the following observations:

1. Forming a special assessment district or a Mello-Roos Community Facilities District.

The basic decision to form an assessment district would appear to be critical to the project. Therefore, Mr. Abbott could not participate in the decision if the total effect of the project upon Collet is material. However, once the determination has been made to form the assessment district, you may be called upon to advise the authority as to merits of forming the district under one or more procedures. You would also advise the authority as to the steps necessary to comply procedurally. These decisions will generally be implementing decisions.

2. Levying fees and taxes.

Once the basic decision is made to give the authority the power to levy fees and taxes, you would be involved in such matters as drafting the resolution to levy, obtaining the necessary documents such as cost budget reports and notices and waivers to property owners, and other procedural steps required for delegation of authority. These activities should fall within the context of implementing decisions.

3. Entering into lease-purchase agreements and negotiating reimbursement contracts.

You might be involved in lease-purchase agreements with developers in situations where the developer actually builds the interchange. Mr. Abbott would be precluded from participating in decisions involving any such agreements to which Collet is a party. This would also be the case with respect to any reimbursement contracts to be entered into with Collet.

4. Issue bonds and incur other forms of indebtedness.

According to information provided by you, the bond placement will be handled by separate bond counsel. The basic decision to issue bonds is likely to be critical to the project. Mr. Abbott should not participate in this decision. However, once that decision is made, he may participate in the implementation phase. For example, he could participate in counseling the authority regarding procedural questions that arise unless the difference in procedures at issue is material for Collet under the test provided above.

Public Generally

Even if it is ascertained that a particular decision will have a material financial effect on Collet, this may not result in disqualification if the effect on Collet's property is not distinguishable from the effect on the public generally. (Section 87103.) Regulation 18703 (copy enclosed) provides, in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

The "public" is all the persons residing, owning property, or doing business in the jurisdiction of the agency in question. (Legan, supra, p. 15.) In the case of the authority, this would be the entire area of benefit included within the authority's jurisdiction. (Chin Advice Letter A-88-091, copy enclosed.) The Commission has never adopted a strict arithmetic test for determining what constitutes a significant segment of the public. However, in order to apply the public generally exception, the population affected must be large in number and heterogeneous in nature. (In re Ferraro (1978) 4 FPPC Ops 62; Flynn Advice Letter, No. I-88-430, copies enclosed.) In addition to comprising a significant segment of the jurisdiction, the group affected must be affected in a substantially similar way.

In the situation presented, the jurisdiction of the authority extends to the identified area of benefit surrounding the four proposed interchanges. You indicate that this area is held by approximately 76 owners, including Collet. A review of the interagency financing report that you included with your letter indicates that these owners hold acreage varying from one acre to over 2,500 acres. It would seem that decisions affecting the value of property, including financing costs assessed, would have a greater total dollar effect on larger owners than on smaller owners even if the method of calculation were the same. Collet owns approximately 276 acres in the area of benefit. There are approximately 13 owners of 200 acres or more in the area. While this represents owners of approximately 17 percent of the area covered by the authority, we do not believe that 13 owners is a large group for purposes of making this determination. Therefore, the public generally exception would not apply.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: Margaret W. Ellison  
Counsel, Legal Division

KED/MWE/aa

Enclosures

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July 31, 1989

Kathryn E. Donovan  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Re: Request For Conflict Of Interest Advice

Dear Ms. Donovan:

The City Attorney of the City of Roseville and the Law Offices of Balfrey & Abbott request formal written advice pursuant to Government Code Section 83314(b). The question involves application of the conflict of interest provisions of the Political Reform Act of 1974. The advice is sought on behalf of the City of Roseville and on behalf of Marian E. Moe and William W. Abbott.

The Cities of Roseville and Rocklin, and the County of Placer plan to enter into a Joint Powers Agreement pursuant to Government Code §6500 et. seq., the purpose of which is to create a Joint Powers Authority (JPA) to implement plans for, finance, and construct four (4) freeway interchanges on Highway 65. The Joint Powers Authority is considering contracting with the Law Offices of Balfrey & Abbott to act as legal advisor to the authority. One of Balfrey & Abbott's clients, R.C. Collet, owns three (3) parcels in Placer County within the area of benefit for the freeway interchanges.

Balfrey & Abbott represents R.C. Collet for the purpose for obtaining discretionary land use entitlements and reviewing associated environmental documents. The land use representation relates to a pending application for a use permit from the County of Placer for operation of its properties as a rock quarry. The law firm receives more than \$1,000.00 a year of its income from R.C. Collet. It is contemplated that either Marian E. Moe, a salaried employee, William W. Abbott, a partner, or both, will act as the "consultant" to the JPA.

The Joint Powers Authority will have jurisdiction over the final detailed planning, financing, and construction of the freeway interchanges. The decision to build the four (4) freeway interchanges, and the determination of their locations and design have already been made by the three (3) jurisdictions. The specific properties that are expected to be within the area of benefit have been included in a detailed study of the financing plan, a copy of which is attached. The study includes an estimate of the total costs and a method for allocating the costs among properties in the area of benefit. It is not anticipated that Balfrey & Abbott will be asked to participate in any decision affecting the basic parameters of the project.

The current Placer County General Plan land use designations for R.C. Collet's property are in two categories, called Planning Reserve and Non Residential Urban Land Use. These land uses have been classified as Urban Reserve (UR) in the financing study for purposes of allocating the costs of the four (4) interchanges. The land use category is one of the factors used in calculating the anticipated costs to each property. The other primary factors used are the vehicle trip generation associated with each land use, the distance from the interchanges and alternative routes available to the property in question. The broad classifications for different properties include such categories as urban reserve, single family residential, and multi-family residential.

The Joint Powers Authority will be governed by a three member body with one representative each from the Rocklin City Council, the Roseville City Council and the Placer County Board of Supervisors. The freeway interchanges are anticipated to be financed by a combination of bonds and development fees. The Joint Powers Authority will, among other things: 1) form a special assessment district and/or special tax district such as a Mello-Roos Community Facilities District; 2) levy fees and taxes; 3) enter into lease-purchase agreements; 4) issue bonds and incur other forms of indebtedness; and 5) negotiate and enter into reimbursement agreements for repayment if a developer constructs one or more interchanges. The JPA will also have the authority to develop and adopt an interchange construction financing plan which may include a mechanism for borrowing funds collected from one interchange to fund another.

The Joint Powers Authority has no authority over changes in land use entitlements or other matters on which Balfrey & Abbott is representing R.C. Collet. The land use entitlements which R.C. Collet is seeking are not dependent upon the timing, detailed planning, financing or construction of the freeway interchanges being built. The volume of business Balfrey & Abbott conducts on behalf of R.C. Collet will not be affected by the decisions of the JPA as to the detailed design, financing and construction of the freeway interchanges because the major decisions regarding the construction and location of the interchanges have already been made by the three jurisdictions.

It is not anticipated that Balfrey & Abbott will be asked to provide advice regarding the total cost of the freeway interchanges or the methodology for determining a fair allocation among property owners.

Although it is foreseeable that R.C. Collet's property may increase in value more than \$10,000.00 as a result of the construction of the freeway interchanges, it is not anticipated that Balfrey & Abbott will be asked to participate in decisions affecting the questions of whether the freeway interchanges will be built or the timing of when they will be built.

### Questions

We request the Commission's formal written advice as to whether any conflict of interest would exist if the Law Offices of Balfrey & Abbott enters into a contract with the Joint Powers Authority to advise it on those matters within its jurisdiction in the following circumstances:

1. As a threshold question, would Marian E. Moe or William W. Abbott's role as the legal advisor the JPA in matters involving the financing and detailed design of the interchanges, establishing the assessment districts, levying taxes and fees, and making and monitoring construction contracts, as described above, be considered the role of a "consultant" covered by the conflict of interest provisions of Government Code Section 18700(a)(2)?

Assuming the answer to the above question is affirmative, the following questions are posed.

2. There are approximately 76 owners of property within the area of benefit, all of which will be treated similarly for purposes of paying for the interchanges and benefiting from them. Approximately 1530 acres of these properties are currently classified as Urban Reserve, as is R.C. Collet's property. Collet's property consists of 267 acres out of a current total 8,874 acres within the area of benefit. Assuming that Marian E. Moe and William W. Abbott are "consultants" for purposes of the Act, is the effect upon R.C. Collet's property due to the construction of the interchanges considered an effect that is not distinguishable from its effect upon a significant segment of the public, since R.C. Collet's property will be affected in a way similar to all the other parcels within the area of benefit?

If the answer to question 2 is in the negative, please respond to the following questions.

3. Marian E. Moe is an employee of Balfrey & Abbott whose salaried income is not affected by the gross income to the firm. The source of income to her is Balfrey & Abbott and not R.C. Collet. Ms. Moe does not perform services for R.C. Collet, although Mr. Abbott does. If Marian E. Moe works on the project without direct supervision by any of the partners of Balfrey & Abbott, will she have to disqualify herself from participating in any decisions if she acts as legal advisor to the JPA?
4. If Marian E. Moe later becomes a partner in Balfrey & Abbott with less than

a 10 percent share, what disqualification issues would apply if she continues to act as the legal advisor to the JPA?

5. If the contract with Balfrey & Abbott is limited in such a way that Balfrey & Abbott does not participate in recommendations on the timing, sequence or location of construction of the four interchanges, does not make recommendations on whether one allocation method for spreading the cost is preferable to another (except in so far as one may be more legally defensible than the other), and does not negotiate any reimbursement agreement with R.C. Collet, will that insulate Marian E. Moe and/or William W. Abbott from any potential disqualification issue if she or he acts as legal advisor to the JPA?

William W. Abbott has a greater than 10 percent ownership interest in the firm. In the past 12 months, R.C. Collet has been a pro rata source of income in excess of \$250.00 to Mr. Abbott as a result of his share in the firm, and that will continue to be the case for the foreseeable future.

6. Each benefited property's share of costs will be determined based on the land use classification and trip generation as of the time permits are issued or approval for development occurs. The formula for calculating the allocation of costs will be determined before or at the time of the formation of the assessment or Mello-Roos districts, and is not likely to be changed thereafter. During the life of the JPA, it is possible that the land use designation on R.C. Collet's property would change as a result of a vote by the local government having jurisdiction, and the corresponding classification for purposes of calculating the benefiting property's share of costs might be altered according to the pre-determined formula. Would Marian E. Moe or William W. Abbott's actions as legal advisor to the JPA be affected if a change in land use--a matter not within the JPA's jurisdiction--occurs?

Very truly yours,



Marian E. Moe  
Balfrey & Abbott



Michael Dean,  
Roseville City Attorney

MEM:ejf  
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July 31, 1989

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Sacramento, CA 95814

Re: Request For Conflict Of Interest Advice

Dear Ms. Donovan:

The City Attorney of the City of Roseville and the Law Offices of Balfrey & Abbott request formal written advice pursuant to Government Code Section 83314(b). The question involves application of the conflict of interest provisions of the Political Reform Act of 1974. The advice is sought on behalf of the City of Roseville and on behalf of Marian E. Moe and William W. Abbott.

The Cities of Roseville and Rocklin, and the County of Placer plan to enter into a Joint Powers Agreement pursuant to Government Code §6500 et. seq., the purpose of which is to create a Joint Powers Authority (JPA) to implement plans for, finance, and construct four (4) freeway interchanges on Highway 65. The Joint Powers Authority is considering contracting with the Law Offices of Balfrey & Abbott to act as legal advisor to the authority. One of Balfrey & Abbott's clients, R.C. Collet, owns three (3) parcels in Placer County within the area of benefit for the freeway interchanges.

Balfrey & Abbott represents R.C. Collet for the purpose for obtaining discretionary land use entitlements and reviewing associated environmental documents. The land use representation relates to a pending application for a use permit from the County of Placer for operation of its properties as a rock quarry. The law firm receives more than \$1,000.00 a year of its income from R.C. Collet. It is contemplated that either Marian E. Moe, a salaried employee, William W. Abbott, a partner, or both, will act as the "consultant" to the JPA.

The Joint Powers Authority will have jurisdiction over the final detailed planning, financing, and construction of the freeway interchanges. The decision to build the four (4) freeway interchanges, and the determination of their locations and design have already been made by the three (3) jurisdictions. The specific properties that are expected to be within the area of benefit have been included in a detailed study of the financing plan, a copy of which is attached. The study includes an estimate of the total costs and a method for allocating the costs among properties in the area of benefit. It is not anticipated that Balfrey & Abbott will be asked to participate in any decision affecting the basic parameters of the project.

The current Placer County General Plan land use designations for R.C. Collet's property are in two categories, called Planning Reserve and Non Residential Urban Land Use. These land uses have been classified as Urban Reserve (UR) in the financing study for purposes of allocating the costs of the four (4) interchanges. The land use category is one of the factors used in calculating the anticipated costs to each property. The other primary factors used are the vehicle trip generation associated with each land use, the distance from the interchanges and alternative routes available to the property in question. The broad classifications for different properties include such categories as urban reserve, single family residential, and multi-family residential.

The Joint Powers Authority will be governed by a three member body with one representative each from the Rocklin City Council, the Roseville City Council and the Placer County Board of Supervisors. The freeway interchanges are anticipated to be financed by a combination of bonds and development fees. The Joint Powers Authority will, among other things: 1) form a special assessment district and/or special tax district such as a Mello-Roos Community Facilities District; 2) levy fees and taxes; 3) enter into lease-purchase agreements; 4) issue bonds and incur other forms of indebtedness; and 5) negotiate and enter into reimbursement agreements for repayment if a developer constructs one or more interchanges. The JPA will also have the authority to develop and adopt an interchange construction financing plan which may include a mechanism for borrowing funds collected from one interchange to fund another.

The Joint Powers Authority has no authority over changes in land use entitlements or other matters on which Balfrey & Abbott is representing R.C. Collet. The land use entitlements which R.C. Collet is seeking are not dependent upon the timing, detailed planning, financing or construction of the freeway interchanges being built. The volume of business Balfrey & Abbott conducts on behalf of R.C. Collet will not be affected by the decisions of the JPA as to the detailed design, financing and construction of the freeway interchanges because the major decisions regarding the construction and location of the interchanges have already been made by the three jurisdictions.

It is not anticipated that Balfrey & Abbott will be asked to provide advice regarding the total cost of the freeway interchanges or the methodology for determining a fair allocation among property owners.

Although it is foreseeable that R.C. Collet's property may increase in value more than \$10,000.00 as a result of the construction of the freeway interchanges, it is not anticipated that Balfrey & Abbott will be asked to participate in decisions affecting the questions of whether the freeway interchanges will be built or the timing of when they will be built.

### Questions

We request the Commission's formal written advice as to whether any conflict of interest would exist if the Law Offices of Balfrey & Abbott enters into a contract with the Joint Powers Authority to advise it on those matters within its jurisdiction in the following circumstances:

1. As a threshold question, would Marian E. Moe or William W. Abbott's role as the legal advisor the JPA in matters involving the financing and detailed design of the interchanges, establishing the assessment districts, levying taxes and fees, and making and monitoring construction contracts, as described above, be considered the role of a "consultant" covered by the conflict of interest provisions of Government Code Section 18700(a)(2)?

Assuming the answer to the above question is affirmative, the following questions are posed.

2. There are approximately 76 owners of property within the area of benefit, all of which will be treated similarly for purposes of paying for the interchanges and benefiting from them. Approximately 1530 acres of these properties are currently classified as Urban Reserve, as is R.C. Collet's property. Collet's property consists of 267 acres out of a current total 8,874 acres within the area of benefit. Assuming that Marian E. Moe and William W. Abbott are "consultants" for purposes of the Act, is the effect upon R.C. Collet's property due to the construction of the interchanges considered an effect that is not distinguishable from its effect upon a significant segment of the public, since R.C. Collet's property will be affected in a way similar to all the other parcels within the area of benefit?

If the answer to question 2 is in the negative, please respond to the following questions.

3. Marian E. Moe is an employee of Balfrey & Abbott whose salaried income is not affected by the gross income to the firm. The source of income to her is Balfrey & Abbott and not R.C. Collet. Ms. Moe does not perform services for R.C. Collet, although Mr. Abbott does. If Marian E. Moe works on the project without direct supervision by any of the partners of Balfrey & Abbott, will she have to disqualify herself from participating in any decisions if she acts as legal advisor to the JPA?
4. If Marian E. Moe later becomes a partner in Balfrey & Abbott with less than

a 10 percent share, what disqualification issues would apply if she continues to act as the legal advisor to the JPA?

5. If the contract with Balfrey & Abbott is limited in such a way that Balfrey & Abbott does not participate in recommendations on the timing, sequence or location of construction of the four interchanges, does not make recommendations on whether one allocation method for spreading the cost is preferable to another (except in so far as one may be more legally defensible than the other), and does not negotiate any reimbursement agreement with R.C. Collet, will that insulate Marian E. Moe and/or William W. Abbott from any potential disqualification issue if she or he acts as legal advisor to the JPA?

William W. Abbott has a greater than 10 percent ownership interest in the firm. In the past 12 months, R.C. Collet has been a pro rata source of income in excess of \$250.00 to Mr. Abbott as a result of his share in the firm, and that will continue to be the case for the foreseeable future.

6. Each benefited property's share of costs will be determined based on the land use classification and trip generation as of the time permits are issued or approval for development occurs. The formula for calculating the allocation of costs will be determined before or at the time of the formation of the assessment or Mello-Roos districts, and is not likely to be changed thereafter. During the life of the JPA, it is possible that the land use designation on R.C. Collet's property would change as a result of a vote by the local government having jurisdiction, and the corresponding classification for purposes of calculating the benefiting property's share of costs might be altered according to the pre-determined formula. Would Marian E. Moe or William W. Abbott's actions as legal advisor to the JPA be affected if a change in land use--a matter not within the JPA's jurisdiction--occurs?

Very truly yours,



Marian E. Moe  
Balfrey & Abbott



Michael Dean,  
Roseville City Attorney

MEM:ejf  
8907.61.3  
7/31/89



# California Fair Political Practices Commission

August 3, 1989

Marian E. Moe  
Balfrey & Abbott  
1801 I Street, Suite 200  
Sacramento, CA 95814

Re: Letter No. 89-454

Dear Ms. Moe:

Your letter requesting advice under the Political Reform Act was received on July 31, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh